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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,294	11/26/2001	Robert B. Uselton	125483-1002	8843

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MICHAEL E. MARTIN  
GARDERE WYNNE SEWELL LLP  
1601 ELM STREET, SUITE 3000  
DALLAS, TX 75201

EXAMINER

LEO, LEONARD R

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 08/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/994,294

Applicant(s)

USELTON ET AL.

Examiner

Leonard R. Leo

Art Unit

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-13 and 16-28 is/are pending in the application.
- 4a) Of the above claim(s) 5-9,13 and 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,10-12,16,21 and 24-28 is/are rejected.
- 7) ☒ Claim(s) 22 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

The amendment filed on May 13, 2004 has been entered. Claims 2, 4 and 14-15 are cancelled, claims 1, 3, 5-13 and 16-28 are pending, and claims 5-9, 13 and 17-20 remain withdrawn.

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-12, 16 and 25-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 11 recites the broad recitation "roughened

Art Unit: 3753

portion", and the claim also recites "trips" which is the narrower statement of the range/limitation.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 11, 21, 24-25 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Nettle (Figures 1-2). Regarding claims 24 and 28, the recitation of "coining, stamping and punching" is considered to be a method limitation in an apparatus claim, which bears no patentable weight in this instance. See MPEP 2113.

Claims 1, 3, 11-12, 21, 24-25 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Macmillan. Regarding claims 24 and 28, the recitation of "coining, stamping and punching" is considered to be a method limitation in an apparatus claim, which bears no patentable weight in this instance. See MPEP 2113.

Claims 1, 3, 10-12, 16, 21, 24-25 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuethe (Figures 7a and 13). Regarding claims 10 and 16, Kuethe (column 5, lines 11-18) discloses trip heights are chosen based on achieving optimum heat transfer and minimum sound generation. Regarding claims 24 and 28, the recitation of "coining, stamping and punching" is considered to be a method limitation in an apparatus claim, which bears no patentable weight in this instance. See MPEP 2113.

Art Unit: 3753

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nettle or Macmillan in view of Kuethe.

Nettle or Macmillan discloses all the claimed limitations except a height to laminar boundary relationship.

Kuethe (Figure 13 and column 5, lines 11-18) discloses a fan or propeller blade 110 comprising a leading edge and a trailing edge having a plurality of trips 112 with a chosen height for the purpose of achieving optimum heat transfer and minimum sound generation.

Since Nettle or Macmillan and Kuethe are both from the same field of endeavor and/or analogous art, the purpose disclosed by Kuethe would have been recognized in the pertinent art of Nettle or Macmillan.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Nettle or Macmillan any trip height for the purpose of achieving optimum heat transfer and minimum sound generation as recognized by Kuethe.

***Allowable Subject Matter***

Claims 22-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 26-27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

The rejection in view of Peltier is withdrawn.

Applicant's arguments have been fully considered but they are not persuasive.

The Examiner agrees that Kuethe (column 5, lines 18-20) discloses "the height ... is *preferably* less than the anticipated boundary layer thickness (emphasis added)." However, this is merely a preference, whereas Kuethe (column 5, lines 11-18) discloses the height is chosen to achieve optimum heat transfer and minimum sound generation. Optimum heat transfer is associated with removal of the boundary layer. Thus, one of ordinary skill in the art would choose the height based on the desired characteristics.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

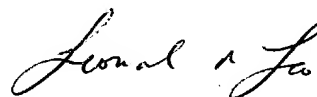
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3753

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry of a general nature, relating to the status of this application or clerical nature (i.e. missing or incomplete references, missing or incomplete Office actions or forms) should be directed to the Technology Center 3700 Customer Service whose telephone number is (703) 306-5648. Status of the application may also be obtained from the Internet: <http://pair.uspto.gov/cgi-bin/final/home.pl>

Any inquiry concerning this Office action should be directed to Leonard R. Leo whose telephone number is (703) 308-2611.



LEONARD R. LEO  
PRIMARY EXAMINER  
ART UNIT 3753

August 18, 2004